HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1316 (S/S) year 2003.

Puran Singh Nayal S/o Sri Nain Singh
R/o Village Khand Compound Gadarpur
Disst. Udham Singh Nagar.

Versus

1. State of Uttaranchal through Secretary, Panchayati Raj
2. Disst. Magistrate Udham Singh Nagar
3. Chief Development Officer, Disst Udham Singh Nagar
4. Panchayati Raj Officer Disst. Udham Singh Nagar.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision: 1-11-2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1316 (S/S) 2003

Court No. 6

Pooran Singh Nayal
S/o Late Nain Singh,
R/o Village Khand Compound,
Gadarpur, Distt. Udham Singh Nagar. …… Petitioner

Versus

1. State of Uttaranchal
   through Secretary, Panchayati Raj.
2. District Magistrate,
   Distt. Udham Singh Nagar.
3. Chief Development Officer,
   District Udham Singh Nagar.
4. District Panchayati Raj Officer,
   Distt. Udham Singh Nagar. …….. Respondents

Date: 1st November 2003

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has challenged the order dated 20.10.2003 by which the petitioner has been transferred from Vikas Khand, Gadarpur to Vikas Khand Kashipur.

Brief facts giving rise to the present writ petition are that the petitioner was appointed as a Gram Panchayat Adhikari in the year 1971. From time to time the petitioner was transferred at various places in the district of Uttaranchal. The petitioner was promoted on 23.10.2000 on the post of Assistant Development Officer from the post of Gram Panchayat Adhikari.

The petitioner was transferred from district Bageshwar to district Udham Singh Nagar, Vikas Khand after promotion as an Assistant Development Officer.

The grievance of the petitioner is that he has been transferred in the middle of session and the children of the petitioner are getting Education and it will be difficult for them to shift from Gadarpur to Kashipur.

So far as the transfer matter is concerned, no interference can be made in the matter of transfer as held by the Apex Court (A.I.R. 1991 Supreme Court Page 532) in the case of Mrs. Shilpi Bose & others V/s State of Bihar & others. The observations of the Apex Court are quoted below:-

> "In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected partly should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

Similar view has been taken by the Apex Court in (2001) 5 SCC page 508 State Bank of India V/s Anjan Sanyal & others. The observations of the Apex Court are quoted below:-

> "An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer

or that the authorities, who issued the order, had not the competence to pass the order."

The petitioner has referred the decision of 1994 Supp. (2) Supreme Court Cases 666; Director of School Education, Madras & others V/s O. Karuppa Thevan & others, where the Apex Court has held that the transfer of the employee in the middle of the session will affect the education of his children. The Apex Court, therefore, has passed the following order:-

"1. Leave granted. Heard both counsel.

2. The tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

In the light of the aforesaid judgment, the Division Bench of the Allahabad High Court in (1996) 1 UPLBEC 353 Balvir Singh V/s

Director Animal Husbandry, Lucknow & others has passed the order to the following affect:-

> "3. It is contended in paragraph No. 8 of this writ petition that the petitioner's son Ashish Kumar is studying in Class II in Modern School, Rishikesh, district Dehradun which is an English Medium Public School having a very good reputation in the district, Dehradun and he has also appeared in the half yearly examination in the school in the month of September 1995 and not the final examination is due. If the petitioner is transferred, the studies of the son of the petitioner will be hampered.
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> 4 In view of the decision of the Apex Court rendered in Director of School Education Madras and others V/s D. Karuppa Thevan and another, 1994 Supp. (2) Supreme Court Cases 666; (1996) 1 UPLBSEC 347, learned counsel appearing for the petitioner, submitted that if in mid-term the studies of the employee's children are likely to be hampered, the transfer order can be interfered with."

The petitioner has stated that his children are studying in the Educational Institution. Relevant paragraph 9 is quoted below:-

> "9. That the transfer of the petitioner is in Mid-Session and against the provisions. It is pertinent to mention here that the children of the petitioner are getting education where the Educational Session has been started in the month of April and if the petitioner is relieved at this juncture the education of the children of the petitioner will be affected adversely, hence, also the order cannot be permitted to sustained as being a Mid-Session Transfer."

The petitioner has already made a representation on 21st October 2003. The representations shall consider the representation of the petitioner in the light of the judgment of the Apex Court that till the academic session, the petitioner should be retained.

The representation of the petitioner shall be decided within a period of one month from today. The transfer order dated 20.10.2003 shall remain in abeyance for a period of 6 weeks only if the petitioner has not been relieved.

With the aforesaid observations, the writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

01.11.2003
Gur.